of which he is administrator. *Willard v. Bassett,* 27 Ill. 37. A trustee can make no profit out of his office, for the reason that he shall not be placed in any position where his interest may be opposed to duty. *Hough* v. *Harvay,* 71 Ill. 72. Nor can he recover for professional services even when the costs are not payable out of the trust funds. *In re Reed,* 12 N. Y. St. Rep. 139. When counsel fees are allowed to an administrator they are not the usual professional charges, but a fair and reasonable allowance in view of all the facts of the particular case. *Clark v. Knox,* 70 Ala. 529.

FRAUDULENT CONVEYANCES—TRANSFERS INVALID—INSOLVENCY.—TRANSFER AS SECURITY.—GODFREY FRANK & CO., ET AL., V. DOUGHTY, 47 So. 643 (MISS.).—*Held,* that though a grantor was financially embarrassed and was indebted to others when he executed a deed of trust on land to his wife, who was also a creditor, the trust deed being for the grantee's sole benefit to secure a valid debt without any benefit being reserved to the grantor, was not in fraud of the other creditors.

The general rule is that no debtor can legally make any conveyance which will place his property beyond the reach of his creditors without their consent. *De Wolf v. Sprague Manufacturing Co.,* 49 Conn. 282. However, a failing or insolvent debtor may select one or more of his creditors and pay them in full to the exclusion of any others, provided he retains no benefit himself beyond what the law allows or secures to him. *McDowell v. Steele,* 29 Fed. 738. But should the preferred creditor be the wife of the debtor, the courts will scrutinize the transaction very closely and any conveyance under such circumstances must clearly appear to be made in good faith and for valuable consideration. *First Nat. Bank v. Bartlett,* 8 Neb. 319. The burden of proof in such a case rests on the grantee to show a consideration not materially disproportionate to the value of the land conveyed. *McTeers v. Perkins,* 106 Ala. 411. *Contra*: *Grant v. Ward,* 64 Me. 239.

HIGHWAYS—FRIGHTENING HORSES—NEGLIGENCE.—JOHN F. DAVIS & SON V. THORNBURG, 62 S. W. 1088 (N. C.).—*Held,* that the defendants were not liable for leaving a broken-down traction engine on the side of the highway unless they had unreasonably delayed in repairing and removing it.

Most of the courts hold that such objects left within the limits of the highway, but outside the traveled way, are defects merely from their tendency to frighten horses, *Cooley on Torts, Students' Edition,* Sec. 372; *Morse v. Richmond,* 41 Vt. 435; but it is immaterial whether the object is within or without the limits of the highway. *House v. Metcalf,* 27 Conn. 631. The following objects have been held to constitute such defects: A load of machinery left by the roadside, *Bennett v. Lovel,* 12 R. I. 166; a white cloth used as a hay cap near the road, *Lynn v. Hooper,* 93 Me. 46; and a hollow log, blackened by fire, on the side of the highway, *Foshay v. Glen Haven,* 25 Wis. 288. Some courts, however, hold that an object in the highway is not to be deemed a defect for the sole reason that it is of a nature to frighten horses, *Kingsbury v. Dedham,* 95 Mass. 186; but it

must be calculated to frighten ordinarily gentle and well trained horses. *Poilet v. Simmons,* 106 Pa. St. 95. Still other courts hold that it is not an actionable defect unless the traveler actually comes into contact with the object. *Cook v. Charlestown,* 98 Mass. 80; *contra*: *Bartlett v. Hoockett,* 48 N. H. 18.

HOMICIDE—DUTY TO RETREAT.—MILLER V. STATE, 119 N. W. 850 (WIS.).—*Held,* that the common law rule as to the duty of one attacked to "retreat to the wall" or so far as he can, or so far that to go further would rather increase than decrease the danger, is no longer the law.

The doctrine of "retreat to the wall" had its origin before the general introduction of fire-arms and to-day seems to be considered obsolete or loosely construed in the majority of states. The idea of retreat is lost in the greater question, did the defendant, when assaulted, believe or have reason to believe that the use of a deadly weapon was necessary to his own safety. *Runyan v. State,* 57 Ind. 80; *Philips v. Commonwealth,* 63 Ky. (2 Duv.) 328. Even where the courts are more strict in their application of this rule, the suddenness of the attack, the peril of exposing the person during flight, of endangering a third party, and the fact that those in a position of peril are not called upon to weigh with a nicety the question of what is the proper line of action, is taken into consideration. *People v. Fiori,* 108 N. Y. S. 416; *People v. Macard,* 73 Mich. 15; *People v. Harper,* 2 Wheeler Cr. Cas. 347. At variance with the more general modern tendency is the old common law rule that no one is excused for taking human life if with safety to his own person he could have retired from the combat. This more peaceable view is still held in many jurisdictions. *State v. Honey,* 65 Atl. 764 (Del.); *People v. Mallon,* 189 N. Y. 520; *State v. Kennedy,* 91 N. C. 572.

HOMICIDE—UNLAWFUL ARREST—RIGHT TO RESIST.—PERDUE V. STATE, 63 S. E. 922 (GA.).—*Held,* that a citizen whom it is attempted unlawfully to arrest has a right to resist force with force proportionate to that being used to arrest him; and if, in the exercise of such right of resistance, he kills an officer who is unlawfully attempting to arrest him he is guilty of no offense. Powell, J., *dissenting.*

A large number of jurisdictions hold with the above case, that no crime is committed in the killing of an officer while resisting unlawful arrest. *Simmerman v. State,* 14 Nebr. 568; *State v. Oliver,* 2 Houst. (Del.) 585; *Starr v. U. S.,* 153 U. S. 614. Other courts hold that there must be danger of bodily harm to the defendant before the killing of a person attempting to make an illegal arrest becomes justifiable. *State v. Row,* 81 Iowa 138; *Bowling v. Commonwaelth,* 7 Ky. L. Rep. 821; *State v. Cantieny,* 34 Minn. 1. In *Williams v. State,* 44 Ala. 41, it is held that it is the duty of a person to submit to the illegal arrest and seek redress at law. On the other hand the English courts and those in some American jurisdictions hold that when a police officer is slain while attempting to make an unlawful arrest, the offense is reduced from murder to man-